

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 15, 2019

Sheila T. Reiff
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2018AP52

Cir. Ct. No. 2013SC2518

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

VICTORY VALLEY CHURCH, INC.,

PLAINTIFF-RESPONDENT,

v.

ALFRED GEORGE D/B/A VICTORY CHRISTIAN CATHEDRAL, INC.

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Winnebago County: JOHN A. JORGENSEN, Judge. *Affirmed.*

¶1 HAGEDORN, J.¹ This appeal arises from an eviction and money judgment against Alfred George d/b/a Victory Christian Cathedral, Inc. (George)

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2017-18). All references to the Wisconsin Statutes are to the 2017-18.

after he defaulted on his lease with Victory Valley Church, Inc. (VVC). Almost two years after that decision, George moved to correct the record so that the judgment was not entered against him personally. The circuit court denied this request and awarded additional attorney's fees and costs to VVC. On appeal from these rulings, George continues to dispute his personal liability and objects to the additional fees and costs. The problem is that George's effort to change the underlying judgment is too late in the game. The issue has been forfeited and his motion was correctly denied; nor do we find any error in the circuit court's imposition of fees and costs. We affirm.

BACKGROUND

¶2 In 2013, VVC leased its building to George for the purpose of using the property to operate a church. George executed the lease on behalf of Victory Christian Cathedral, Inc., which was incorporated as a nonstock corporation a month later. The tenancy relationship quickly soured and VVC filed a small claims action against George, seeking his eviction for failure to pay rent, utilities, and insurance obligations.²

¶3 In 2015, the circuit court granted VVC summary judgment, finding that George had failed to comply with the terms of the lease and failed to cure his breach upon proper notice. The court entered judgment against George for

² Shortly thereafter, in an inverse of the eviction case, George and members of the church sought control of Victory Valley Church, Inc. through a declaratory judgment action. This concurrent proceeding caused the eviction case to be stayed on multiple occasions. The declaratory judgment action—which was previously before this court—is not at issue here. *Victory Valley Church, Inc. v. Purported Victory Valley Church*, No. 2015AP866, unpublished slip op. (WI App Apr. 5, 2017) (affirming judgment declaring non-George faction the lawful officers and members of the corporation), *review denied* (WI Sept. 11, 2017).

\$10,358.29 and issued a written order reflecting that a writ of eviction was to be issued. Both the judgment and the order identified the liable party as “Alfred George d/b/a Victory Christian Cathedral, Inc.” George appealed, and this court dismissed the appeal as untimely. Both George’s motion for this court’s reconsideration and his petition for supreme court review were denied.³

¶4 Nearly two years later, George filed what he styled as a motion to correct a misnomer or clerical error in the case caption and judgment. In reality, George sought to change the record to reflect that the judgment was entered solely against “Victory Christian Cathedral, Inc.,” and not him personally. The circuit court denied the motion and granted VVC’s motion for additional attorney’s fees and costs. The court entered an order on the motions and an amended judgment against George reflecting the increased damages. George now appeals the decision and additional fees and costs.

DISCUSSION

¶5 The clear objective of George’s appeal is to challenge his personal liability. To that end, George makes two separate but related arguments. He first contends that, in light of the immunity conferred to corporate directors and officers under WIS. STAT. ch. 181, the circuit court erred in finding him personally responsible for the debts and liabilities of Victory Christian Cathedral, Inc. Second, George collaterally attacks the underlying judgment by contesting the denial of his motion to correct the record. With each argument, George runs into

³ *Victory Valley Church, Inc. v. George*, No. 2015AP2561, unpublished slip op. (WI Oct. 11, 2016).

the same problem—namely, whether challenged directly or collaterally, the issue of his personal liability is not properly before this court.

¶6 George’s liability was determined when the circuit court entered summary judgment against “Alfred George d/b/a Victory Christian Cathedral, Inc.” Although WIS. STAT. ch. 181 confers certain corporate immunity, the record does not show that George pursued this protection prior to the circuit court’s entry of judgment. At a postjudgment hearing, George’s liability was addressed during a tangential discussion on financial disclosure statements; however, no formal challenge against that liability was made at that time, nor did George ever move for postjudgment relief on that issue. Instead—as discussed below—such a challenge only arose when George moved to correct the record nearly two years after the judgment was entered. By then, the one-year time limitation for seeking relief from a judgment on the basis of mistake or fraud, misrepresentation, or other misconduct of an adverse party had elapsed. WIS. STAT. § 806.07(2). In addition, this court had already dismissed George’s direct, yet untimely, appeal from the judgment.

¶7 Thus, George’s time to challenge his personal liability has long passed. The issue was forfeited when it was not raised before the circuit court at the time of summary judgment, and we see no reason to exercise this court’s authority to consider the unpreserved issue here.

¶8 As to George’s second argument against his personal liability, the record supports the circuit court’s decision to deny his motion to correct the record. We review a circuit court’s use of its inherent authority to correct an error for an erroneous exercise of discretion. *State v. Prihoda*, 2000 WI 123, ¶17 & n.9, 239 Wis. 2d 244, 618 N.W.2d 857. The circuit court denied the motion after

finding that George was not challenging a misnomer or a clerical error, adding that he had been sued personally and that both parties recognized this fact throughout the proceedings. For support on appeal, George offers various fact-based arguments, all of which go to the underlying issue of his personal liability. Once more, that issue is not a matter for this appeal. Moreover, for our purposes here, none of these arguments overcome the fact that his motion was premised on neither a misnomer nor a clerical error.

¶9 A misnomer is a “technical defect” that exists when an amendment to the pleadings “would result in merely correcting the name under which the right party is sued, as opposed to bringing an entirely new party into the action.” *Johnson v. Cintas Corp. No. 2*, 2012 WI 31, ¶41, 339 Wis. 2d 493, 811 N.W.2d 756 (citing *Hoesley v. La Crosse VFW Chapter*, 46 Wis. 2d 501, 503, 175 N.W.2d 214 (1970)). That is not what George sought here. With his motion, George wanted to change the party that had been sued *and* found liable for damages. This is far beyond a technical defect requiring mere correction.

¶10 A clerical error is “a mere omission to preserve of record, correctly in all respects, the actual decision of the court, which in itself was free from error.” *Bostwick v. Van Vleck*, 106 Wis. 387, 390, 82 N.W. 302 (1900); *see also Hart v. Joseph Schlitz Brewing Co.*, 120 Wis. 553, 557, 98 N.W. 526 (1904) (explaining that correction of a clerical error does not create a new judgment). For example, “[a] difference between the sentence portion of the written judgment of conviction and the circuit court’s unambiguous oral pronouncement of the sentence is a clerical error.” *Prihoda*, 239 Wis. 2d. 244, ¶15.

¶11 George argues that a postjudgment ruling regarding financial disclosure statements created a discrepancy in the record as to his personal

liability. The record shows otherwise. At a postjudgment hearing, the circuit court deferred from ordering George to produce a personal statement, noting that this could be ordered at a later date if proven necessary. In so doing, the court clearly refrained from ruling on anything at that time, much less George's personal liability. According to the record, the specific issue of George's statement was not revisited, nor did the circuit court ever rule in a way that contradicted its written judgment against George. In sum, we conclude that the circuit court's denial of George's motion was, at the very least, a reasonable exercise of its discretion.

¶12 George also appeals the award of additional attorney's fees and costs. He argues that he was not able to examine proof of the fees' reasonableness and that the award was not based on the circuit court's requisite substantive review. This determination is also one left to the circuit court's discretion. *Franke v. Franke*, 2004 WI 8, ¶84, 268 Wis. 2d 360, 674 N.W.2d 832.

¶13 The record shows that after George moved to correct the record, VVC moved for an amended judgment to reflect increased litigation costs arising from George's motion. At the request of George's counsel, the parties agreed to a truncated briefing schedule on VVC's motion. Specifically, the schedule enabled VVC to orally reply to any response filed by George. After George objected to the fees VVC was seeking, VVC provided the court and counsel with corroborating records on the morning of the motions hearing. Following argument from counsel, the court granted VVC's motion in light of the parties' contractual agreement for

attorney's fees and the reasonableness of the requested amount. Because we find no error in the record, we affirm that decision.⁴

By the Court.—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

⁴ VVC seeks an order requiring George to pay the costs incurred in defending this appeal. WIS. STAT. RULE 809.25(3). Although we find little merit to George's arguments on appeal, we decline to find his appeal wholly frivolous and deny VVC's motion. See *Morrison v. Rankin*, 2007 WI App 186, ¶39, 305 Wis. 2d 240, 738 N.W.2d 588. We also deny George's request for an order requiring VVC to pay his attorney's fees incurred in responding to VVC's motion.

